

IDAHO PLUMBING BOARD EMERGENCY MEETING
March 10, 2006

**Minutes of the March 10, 2006 Meeting
of the Idaho Plumbing Board**

Note: The following report is not intended to be a verbatim transcript of the discussions at the meeting, but is intended to record the significant features of those discussions.

The February 10, 2006 emergency telephonic meeting of the Plumbing Board was called to order by Chairman Ray Coon at 2:00 p.m. The meeting was held in Meridian, Idaho, at the office of the Division of Building Safety. Those attending were:

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| BOARD MEMBERS: | Ray Coon, Chairman Milford Terrell Ben Schooley (via telephone) Bob Livesay, Vice Chairman (via telephone) |
| BOARD MEMBERS ABSENT: | N/A |
| DBS STAFF MEMBERS: | John McAllister, DBS Administrator Marsi Woody, Deputy Administrator Steve Keys, Building Bureau Chief Rich Watson, Acting HVAC/Plumbing Bureau Chief Bob Rawlings, Plumbing Bureau Al Caine, Licensing Supervisor Linda Hyde, Administrative Assistant |
| OTHERS PRESENT: | Jerry Peterson, Idaho Building Trades Gary Ziegler Mike Kelly, LU 296 Ed Howland, BSU Roy Eiguren, Represents CNA/Western Surety |

Milford began by saying Roy Eiguren was coming to the meeting today as a lobbyist supporting **HB(761)**. Roy represents CNA Sureties, which is a bonding company. CNA is located in Sioux Falls, SD. This bill was going to be voted on yesterday (3/9/06), they do have the votes.

The **HB(651)** regarding becoming a Plumber without any experience simply by taking a short test was pulled, put in the drawer and won't come back up in this session. The other **HB(553)** was also killed in committee; it had to do with the schools.

Milford asked Jerry Peterson to explain what he had found out from other surety companies/bonding companies. Highlights: Jerry spoke with two different surety companies. When Roy first promoted this, he stated the industry people would be able to get a \$10,000 Bond for the same price as a \$2,000 Bond. Jerry so far has not been able to find anyone that agrees. The biggest problem with this and the answers he cannot get is who will be doing the complaints. He has been told repeatedly by Roy that it would fall to whoever has jurisdiction. So if DBS was doing the inspections, DBS would be involved. If the city was doing it, the city would be involved, or the county. Boise City is not in favor of being involved. The Association of Cities and Counties does not want to take this responsibility either. DBS is overworked, understaffed and can't take on this

responsibility. If the insurance company is going to be the sole judge and jury on these matters, that changes the amounts substantially. The price for a \$10,000 bond is two points, or \$200.00 per \$10,000 per year. If the insurance company is going to be the sole mediator on these, possibly five points, or \$50.00 per \$1,000, \$500.00 a year. There is no scale, it basically is a preset fee.

Jerry started talking about the Oregon law and Washington law. Both of the laws are very specific in definition and process, appeals, mediation, and advertising. The statutes lay out the whole plan.

This proposed Idaho law is extremely vague, confusing and poorly written. It allows for some vindictive behavior without recourse. If attorneys are needed, it does not allow for the builder to recoup those costs. Oregon and Washington both spell out those topics in detail. Jerry looked at a similar bond where on the bottom there is a statement next to where you sign when purchasing your bond. This statement says you are personally responsible for any additional costs. Jerry asked what are the additional costs, and was told if anyone files a claim, once that claim is opened and that file is started there is a \$250.00 fee assessed to the contractor. Win, lose or draw, you pay.

Both Washington and Oregon allow for a staggered system. Both states have a reasonable resolution so that if you do get into trouble with your bond there are steps to take to get back and get yourself back in business. Neither of those is in this Idaho law. In Washington, the bonding is \$12,000 for general contractors' and \$6,000 for Specialty. In Oregon, it is \$15,000 for generals \$10,000 for specialties' and \$5,000 bond for companies that do less than \$40,000 a year and limit their contracts to less than \$5,000 in value.

Milford stated Roy Eiguren would be arriving and looking for a compromise from this Board. There are only two compromises at this time. One would be to possibly take Plumbing out of it and just leave Electrical and HVAC. The other is this Board might be able to support it if there was a two year sunset on this legislation and it could be brought back up for reconsideration later.

Bob Livesay asked Jerry Peterson if this is a bond for licensing or licensing permit bond? Jerry responded it is a "hybrid" bond. That it is a licensing, code and performance type bond. It is not spelled out that way in the legislation. What they are asking for is a totally open hand in how to develop this. Bob did some checking through his insurance company, and it was explained to him it is either a performance bond or a license permit bond.

Ben Schooley asked if the Plumbing industry has a great amount of claims being issued against surety bonds? Is this bill being brought up to try to get the liability insurance and workers compensation more in line with the general contractor registration? Jerry answered the contractors that registered last year are exempted from this, so are the LP people and so are the modular, manufactured, and mobile home installers. The Home Builders (BCA) and the realtors are also opposed to this.

Steve Keys made the comment this Board does have the power to make rules to flesh this out. Implicit in this bill is the understanding this Board will have to flesh this out, because there is not enough information here to enforce. This is a framework. The Board is still going to have a say as to how the outcome.

Milford disagreed and stated it does not refer back to the Division of Building Safety and the ability of the Boards to do anything. Milford did not read where this Board or any other Board pursuant to this law would have the ability to make changes. The insurance companies have more say over this than the Division of Building Safety or any of the Boards it affects.

Steve Keys stated that this is in addition to the powers and duties of the Idaho Plumbing Board. In those standards it gives you the ability to furnish standards and procedures and prescribe reasonable rules. This Board has the ability to write rules to fill-out the missing parts of this statute, as you would in any other statutory framework. Ray Coon stated he really wanted to hear from legal counsel on this to make sure.

Jerry Peterson wanted to make a clarification. This was only brought up one time at the November Electrical Board meeting and it was brought up under new business, not legislative issues. There was no mention of it on the Agenda. This has not been brought up at the other two Boards meetings. How can they support it when the industry is not aware of it? If this is such a good bill, to protect people, why aren't the Boards talking about it?

Bob Livesay, does not agree with this bill at all.

Milford asked Steve, to Steve's knowledge, has any of the other Chairmen or the other Boards brought this up and voted to support, reject, or discuss this bill? Steve answered all the Board members are aware of this bill, Steve personally sent this out to everybody (the old one), the chairmen of the Electrical and HVAC Boards have voiced that they have no problem with it. They are ok with it. The Boards have not acted upon this bill in terms of endorsement. No action by the Boards.

Milford stated he wanted to reaffirm this was never brought up to any other Boards only to individuals and individual thoughts as to the bill that we see before us today. Steve stated he had sent out the original bill but have they seen the bill in its totality that we see and is going to go before a committee this week? Steve Keys, stated that no, they have not seen this specific bill to his knowledge. (Milford also stated that to his knowledge, the HVAC Board has not discussed **HB (761)** in a Board meeting, except they seem to have asked Steve his opinion). Milford then asked, "The Board has never brought this bill to a Board meeting and discussed this on Public notice that this issue is good or bad?" Steve answered again, because of the late introduction of these bills, they haven't been talked about at the Board meetings. The Electrical Board had a discussion about the concept only.

Ray Coon asked Kay if she has read **HB(761)**. Kay answered yes, Ray then asked her if the Board can make rules to change the wording in any of the bill. Kay answered that Boards are authorized to make rules to clarify a statute or where they are directed by the statute. If a Board believes a particular statute needs clarification, within certain limits there is the ability to do that. Ray asked Kay who would administer if someone's bond gets challenged? In some states it is the cities, counties, or the administrative authority. Kay answered if there was a dispute it would go to District Court.

Roy Eiguren (Attorney and Lobbyist), stated this statute has been drafted in such a way to avoid District Court to determine whether or not the person is in compliance with provisions of the bond. It will be between the licensed tradesperson and the insurance company as provided for in the statute. The insurance company will deal with the consumer.

Further discussion revealed an error in the bill, and it will have to be amended.

Roy suggested it would be extremely powerful if the three Boards involved, (Electrical, HVAC, Plumbing) through their chairmen got together and communicated back to Chairman Black saying let's take a time-

out, let us convene a group in the interim in between sessions to better understand what's going on . Let's look at what is being said as obsolete in the code on Bonding, examine it. Bring in some folks from the bonding industry to talk about what's going on. We're dealing with a provision that goes back to the 60's or 70's and we've all gotten comfortable with it being there. Now we are in the 21st century and things have changed. We need to develop a consensus to take back to the next session and deal with this. Another point, the representations made by the LP Gas folks and the folks working on the contractor registration matter indicated they are willing to come back at a future session to put these type of provisions in their statutes.

MOTION

Milford made a motion this Board follow the process Mr. Eiguren has suggested; we ask Chairman Black to hold onto this so we can start taking a look at this issue. We can be unified next year and ask the Division of Building Safety Director to talk with the other two Boards and see if they will concur with us on sitting in and being a part of this and making sure that we are working towards the same end as what Chairman Black has tried to accomplish this year. Bob Livesay seconded, all aye, motion passed.

Jerry Peterson wanted to make sure everyone understands this hearing is set for Monday afternoon.

Ben Schooley asked to see something in writing stating his Bond of \$10,000 is going to be the same price as his \$2,000 Bond. Milford stated he had a letter from CNA/Western stating the prices. He will give this letter to John/Steve to fax off to the Plumbing Board members.

Milford asked for permission from the Board Chair to meet with Chairman Black and express this Board's feelings. All Board members agreed.

MOTION

Milford made the motion to adjourn, Ben Schooley seconded, all were in favor, motion passed.

The Board adjourned at 3:30 p.m.

Rich Watson, Acting HVAC/Plumbing Bureau Chief, DBS

Date

John A. McAllister, Administrator
Division of Building Safety

Date

Ray Coon, Chairman
Idaho Plumbing Board

Date